

REHABILITATION OF NAZISM AS A CRIME IN THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

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ABSTRACT

The paper discusses with the crime of rehabilitation of Nazism contained in the 1996 Criminal Code of the Russian Federation. It presents the rationale for its introduction into the legislation, the scope of the legal regulation, and its evaluation in terms of its content and edition. For the purpose of the publication, research questions were posed, the answers to which demonstrated the political and populist nature of the regulation and its imprecise casuistic approach, which brings few benefits to Russia's criminal policy.

Keywords: Nazism, rehabilitation of Nazism, criminal code of the Russian Federation

INTRODUCTION

The elaboration of this study was prompted by the Russian military invasion of Ukraine on 24 February 2022. According to the President of the Russian Federation, V.V. Putin, the official purpose of the invasion was the need to denazify Ukraine, which in reality led to the killing of country's residents, regardless of their political views.¹ The fight between Russian soldiers and "Ukrainian Nazis" became the dominant slogan of the war for many months. Prior to the outbreak of the war, many Poles were unaware of the scope of the concept of Nazism used by Russian

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¹ Mirski, A., *Rosja spuściła neonazistów ze smyczy. Tak Putin "denazyfikuje" Ukrainę*, <https://wiadomosci.onet.pl/swiat/tak-rosjanie-denazyfikuja-ukraine-zabijaja-wszystkich/hznvr8t> (accessed on 13.09.2022).



propaganda. They were certainly also not aware that the Russian Criminal Code has for several years criminalised the offence of rehabilitation of Nazism.

The purpose of this paper is to discuss the criminal law regulation of the crime of rehabilitation of Nazism in the light of the 1996 Criminal Code of the Russian Federation² (CC RF). This analysis covers the law and legal literature on the offence mentioned in the title.

The following research questions were posed in view of the proposed evaluation:

1. What was the rationale for introducing the crime of rehabilitation of Nazism into the 1996 Criminal Code of the Russian Federation?
2. What is the scope of legal regulation of the crime of rehabilitation of Nazism?
3. How should outlawing of the rehabilitation of Nazism be evaluated?

RATIONALE FOR OUTLAWING THE REHABILITATION OF NAZISM

The first attempt in Russia to enact a provision establishing liability for an attack on historical memory concerning events of World War II was made in 2009. The Act was tabled by the "United Russia" party. It did not become law due to the many controversies it caused both in Russia and abroad. One of the reasons for this was the use of the wording "distortion of the Nuremberg Tribunal's verdict" which was to be a constituent element of one of the offences. Such wording was deemed legally vague, since it did not include any indication as to the ways in which the verdict delivered by the Tribunal could be distorted. In 2010, the Act was once again submitted to the Duma, again unsuccessfully. Two more drafts of anti-Nazi legislation were later submitted, neither of which was passed.³

The crime of rehabilitation of Nazism (Article 354.1) was introduced to the Russian Criminal Code by the Act of 5 May 2014 on the amendment of certain legislative acts of the Russian Federation.⁴ The provision entered into force on 16 May 2014. It should be noted that the timing of its adoption in May was no coincidence. Fast track proceedings during that month were linked to the traditional enactment of legislation concerning World War II in Russia around 9 May, i.e. Victory Day.⁵

The authors pointed primarily to the situation in Ukraine as rationale for the draft Article 354.1 CC RF. According to them, "the policy of ideologisation, revising history" in that country has led to "fascism developing to its full extent and no

² Ugolovnyy kodeks Rossiyskoy Federatsii ot 13.06.1996 g., N 63-FZ, http://www.consultant.ru/document/cons_doc_LAW_10699/ (accessed on 6.09.2022), hereinafter referred to as "CC RF".

³ Gad'yan, A.S., 'Reabilitatsiya natsizma: nuzhna li novaya ugolovno-pravovaya norma?', in: *O nekotorykh voprosakh i problemakh sovremennoy yurisprudentsii. Sbornik nauchnykh trudov po itogam mezhdunarodnoy nauchno-prakticheskoy konferentsii*, No. 2, Chelyabinsk, 2015, p. 43.

⁴ Federal'nyy zakon, O vnesenii izmeneniy v otdel'nyye zakonodatel'nyye akty Rossiyskoy Federatsii ot 05.05.2014 g., N 128-FZ, http://www.consultant.ru/document/cons_doc_LAW_162575/ (accessed on 13.09.2022).

⁵ Maksimova, M.A., Nazmutdinova, D.M., 'Reabilitatsiya natsizma: prichiny problem prakticheskogo primeneniya stat'i 354.1 uk RF', in: *Nedelya nauki SPBPU. Materialy nauchnoy konferentsii s mezhdunarodnym uchastiyem*, Sankt-Peterburg, 2018, p. 443.

longer being associated with propaganda, but with the commission of crimes, coup attempts, the destruction of human dignity and homicides".⁶ Thus, according to the drafters, the Act was prompted by "the resurgence of the idea of Nazism in Ukraine".⁷

One of the reasons for introducing the provision was also the importance of historical memory in Russia.⁸ It is worth noting that Article 44(3) of the 1993 Constitution of the Russian Federation⁹ stipulates the obligation of care for the preservation of historical and cultural heritage and protection of historical and cultural monuments. The abovementioned provision implies the need to protect historical memory, including protection enshrined in the criminal law.¹⁰ This memory is considered sacred in Russia as "a thread connecting different generations", the unifying factor of Russian society's values. Undermining this element or interfering with it arouses opposition within the population.¹¹ There is a sense of duty in society to pass on information about the heroism of Russians from generation to generation. It is carried out through patriotic upbringing and propaganda.

Another justification for outlawing the rehabilitation of Nazism was the intensification of pro-Nazi activity in Russia,¹² the formation and resurgence of nationalist groups "who blamed the USSR and its successor – Russia – for the outbreak of World War II". They operate systemically and pose a threat to Russian statehood.¹³ It is emphasised that out of the 78 extremist organisations banned in the country, some 20 support Nazi ideology, in particular: The Right Sector, the National Socialist Workers' Party of Russia and the Russian National Union.¹⁴ The problem of a threat in the form of Nazism and fascism resurgence is constantly being identified, as indicated in point 11 of the Strategy for Countering Extremism in the Russian Federation until 2025.¹⁵ It has been underlined many times in Russia that Nazism and fascism are used for "political profiteering", and therefore the revival and activity of these harmful ideologies must not be allowed. In 2016, events in Ukraine and other European countries were pointed out in this context.¹⁶

⁶ Melanich, V.G., 'Ugolovnaya otvetstvennost' za reabilitatsiyu natsizma', in: *Transformatsiya prava i pravookhranitel'noy deyatel'nosti v usloviyakh razvitiya tsifrovyykh tekhnologiy v Rossii, stranakh SNG i Yevropeyskogo Soyuzu: problemy zakonodatel'stva i sotsial'noy effektivnosti*, Saratov, 2019, p. 199.

⁷ Maksimova, M.A., Nazmutdinova, D.M., 'Reabilitatsiya...', op. cit., p. 443.

⁸ Makeyeva, I.S., 'Sotsial'naya obuslovlennost' vvedeniya ugolovnoy otvetstvennosti za reabilitatsiyu natsizma v Rossii', *Vestnik Ural'skogo yuridicheskogo instituta MVD Rossii*, 2021, No. 1, p. 146.

⁹ Konstitutsiya Rossiyskoy Federatsii ot 12.12.1993 g. (as amended), http://www.consultant.ru/document/cons_doc_LAW_28399 (accessed on 20.09.2022).

¹⁰ Gad'yan, A.S., 'Reabilitatsiya...', op. cit., p. 44.

¹¹ Makeyeva, I.S., 'Sotsial'naya...', op. cit., pp. 146–147.

¹² *Ibidem*, p. 147.

¹³ Popova, L.Ye., 'Ugolovno-pravovaya bor'ba s popytkami reabilitatsii natsizma', *Vestnik nauchnykh konferentsiy*, 2016, No. 5-2, p. 91.

¹⁴ Makeyeva, I.S., 'Sotsial'naya...', op. cit., p. 147.

¹⁵ Ukaz Prezidenta RF ot 29 maya 2020 g., No. 344, *Ob utverzhdenii Strategii protivodeystviya ekstremizmu v Rossiyskoy Federatsii do 2025 goda*, <https://www.garant.ru/products/ipo/prime/doc/74094369/> (accessed on 20.09.2022).

¹⁶ Popova, L.Ye., 'Ugolovno-pravovaya...', op. cit., p. 91.

The need to introduce the provision also stemmed from political tensions in the world with regard to revision of the consequences of World War II and, in particular, the verdicts of the Nuremberg trials.¹⁷ Russians believe that Western European states seek to portray their country as an empire of evil, with traditions of tyranny and slavery, as a rationale for isolating Russia.¹⁸ They believe that many countries today want to “take credit for the victory over fascist Germany”.¹⁹ They stress that Russia’s Western partners are “attacking the historical memory of World War II, which for the Soviet people was the Great Patriotic War”.²⁰ According to V.N. Dodonov, rehabilitation of Nazism constitutes an “assault on historical justice” and a “distortion of historical events”.²¹

However, even today, in an age of intensive scientific research, it is still difficult to determine what information about the USSR’s operations during World War II is true. Complete and reliable historical knowledge with regard to certain military operations is still lacking. It should be agreed that we should now “speak of the activities of the USSR officially recorded in the verdict of the Nuremberg Tribunal”.²²

Russians point out that – in view of rehabilitation of Nazism – perpetrators: use mass media, including social networks, where they invent historical myths distorting the historical truth; deliberately remove disputed historical facts and commit errors in their interpretation, drawing false conclusions on this basis; introduce new nomenclature that allows for their own interpretation of historical events and manipulate historical events and figures in an unjustified manner.²³ Therefore, Russians oppose “the mounting campaign to rewrite the history of World War II” and, as propaganda puts it, “the cynical efforts of political elites of many Western and Eastern European countries aimed at destroying historical memory”,²⁴ as well as actions restoring the reputation of Nazi criminals and their accomplices.²⁵ Thus, in the Russians’ opinion, the provision was a reaction against the “heroisation” of Nazism, Nazi criminals, lies about the history of World War II, information about the victors of that war and a way to counteract the activity of such movements in

¹⁷ Makeyeva, I.S., ‘Sotsial’naya...’, op. cit., p. 147.

¹⁸ Griбанov, Ye.V., Yablonskiy, I.V., ‘Ugolovnaya otvetstvennost’ za reabilitatsiyu natsizma: istoriko-pravovyye osnovaniya i kharakteristika’, *Obshchestvo i pravo*, 2017, No. 1, p. 145.

¹⁹ Sementsova, I.A., Fomenko, A.I., ‘Okhrana nashey pobedy v Velikoy Otechestvennoy Voyne ugovolno-pravovymi sredstvami (o sovershenstvovanii st. 354.1 uk RF)’, *Nauka i obrazovaniye: khozyaystvo i ekonomika; predprinimatel’stvo; pravo i upravleniye*, 2020, No. 6, p. 102.

²⁰ Redkov, S.K., Busheva, F.F., ‘Yuridicheskiy analiz st. 354.1 uk RF »Reabilitatsiya natsizma«, *Na puti k grazhdanskomu obshchestvu*, 2020, No. 1, p. 25.

²¹ Pikin, I.V., ‘K voprosu ob ugovolnoy otvetstvennosti za reabilitatsiyu natsizma’, *Nauchnyy vestnik Kryma*, 2022, No. 4, p. 2.

²² Rovneyko, V.V., ‘Problemy ugovolno-pravovoy otsenki reabilitatsii natsizma kak prestupleniya mezhdunarodnogo kharaktera’, *Vestnik udmurtskogo universiteta. Seriya: Ekonomika i pravo*, 2021, No. 31, p. 885.

²³ Oganov, G.K., Borovikov, V.S., ‘Istoricheskaya obuslovlennost’ ustanovleniya ugovolno-pravovogo zapreta reabilitatsii natsizma’, in: *Sbornik izbrannykh statey po materialam nauchnykh konferentsiy GNII NATSRAZVITIYE*, Sankt Peterburg, 2019, p. 522.

²⁴ Makeyeva, I.S., ‘Sotsial’naya...’, op. cit., p. 145.

²⁵ Levandovskaya, M.G., ‘Ugolovnaya otvetstvennost’ za reabilitatsiyu natsizma (po st. 354.1 UK RF)’, *Voprosy rossiyskogo i mezhdunarodnogo prava*, 2018, Vol. 8, No. 7A, p. 142.

Russia".²⁶ It was intended to protect the "Russian cultural code"²⁷ and "prevent the falsification of historical facts". Russians point to Prof. D.M. Feldman's statement on television (TV Centre) about the execution of thousands of Polish soldiers in Katyn, as an example of falsifying history. It resulted in a notification of law enforcement authorities in Moscow that he had committed the crime of rehabilitation of Nazism.²⁸

In order to justify outlawing the rehabilitation of Nazism, Russia has also taken action on the international arena. On 21 November 2014, on Russia's initiative, the UN General Assembly Committee adopted a resolution on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance.²⁹ Several years after the entry into force of Article 354.1 CC RF, i.e. on 18 December 2019, a resolution on combating glorification of Nazism was again passed, on the initiative of that country, at the plenary of the 74th Session of the UN General Assembly. The document was supported by 133 participating states which, according to the Russians, points to the international nature of the issue.³⁰

CLARIFYING THE NAME "CRIME OF NAZISM REHABILITATION"

Clarification must begin by establishing the scope of the concept of Nazism. According to Russian authors, Nazism is: "the ideology underlying policies and practices of the National Socialist German Workers' Party in Germany from 1919 to 1945";³¹ "the ideology and practice of the Nazi regime in Germany in 1933–1945";³² German fascism;³³ "one of the names for German fascism"; "one of the types of fascism";³⁴ however "the most radical (extreme)" type.³⁵

From the definitions of Nazism cited above and other definitions analysed by the author of this publication, it is clear that all scholars consider it to be a manifestation of fascism. Many authors equate fascism with Nazism.³⁶ So what is fascism, then? According to S.I. Ozhegov's Dictionary of the Russian Language, it is "the ideology of militant racism, anti-Semitism and chauvinism, political currents based on it, as well as the open terrorist dictatorship of one dominant party, the repressive regime created by it, aimed at suppressing progressive social movements, destroying

²⁶ Popova, L.Ye., 'Ugolovno-pravovaya...', op. cit., p. 91.

²⁷ Redkov, S.K., Busheva, F.F., 'Yuridicheskiy...', op. cit., p. 25.

²⁸ Gad'yan, A.S., 'Reabilitatsiya...', op. cit., pp. 43 and 45.

²⁹ Andreyeva, A.V., 'Sotsial'naya obuslovlennost' ustanovleniya ugolovnoy otvetstvennosti za reabilitatsiyu natsizma v RF', *Vestnik Moskovskogo universiteta MVD Rossii*, 2015, No. 8, p. 112.

³⁰ Makeyeva, I.S., 'Sotsial'naya...', op. cit., p. 144.

³¹ Levandovskaya, M.G., 'Reabilitatsiya...', op. cit.

³² *Bol'shoy slovar' inostrannykh slov*, https://gufo.me/dict/foreign_words/%D0%BD%D0%B0%D1%86%D0%B8%D0%B7%D0%BC (accessed on 13.09.2022).

³³ *Natsizm*, <https://slovarozhegova.ru/word.php?wordid=16218> (accessed on 13.09.2022).

³⁴ Maraeva, A.V., 'Voprosy tolkovaniya termina "Reabilitatsiya natsizma" primenitel'no k st. 354.1 uk RF', *Vestnik Moskovskogo universiteta MVD Rossii*, 2019, No. 5, p. 154.

³⁵ Ivanov, A.Yu., 'Ponimaniye termina "natsizm" primenitel'no k stat'ye 354.1 Ugolvnogo kodeksa Rossiyskoy Federatsii', *Voprosy rossiyskoy yustitsii*, 2020, No. 9, p. 75.

³⁶ *Ibidem*, p. 74.

democracy and unleashing war".³⁷ By contrast, according to the definition contained in the 1995 Decree of the President of the Russian Federation on Measures to Ensure Coordinated Action by State Authorities in the Fight Against Manifestations of Fascism and Other Forms of Political Extremism in the Russian Federation,³⁸

"fascism is an ideology and practice that affirms the superiority and exclusivity of a particular nation or race, and aims to incite national intolerance, justifying discrimination against representatives of other nations, denying democracy, establishing a cult of the leader, using violence and terror to suppress political opponents and any form of dissent, in order to justify war as a means of solving problems between states."³⁹

The definitions cited confirm the perception of Nazism as a manifestation of fascism. One must also agree with the assertion that, both in the USSR and today, the terms "Nazism" and "fascism" are treated in Russia as synonyms.⁴⁰ Some regard Nazism as "a form of social organisation that combines socialist ideas with extreme nationalism and racism".⁴¹ They even claim that Nazism contains "elements of socialism, nationalism, racism, anti-Semitism and totalitarianism".⁴² Others reflect on the links with extremism and terrorism exhibited by Nazism. While they perceive links with extremism, they do not observe links with terrorism.⁴³

Continuing reflections on the concept of Nazism, it must be stated that, according to Russian scholars, "it involves the assertion of the superiority of a racial, national or ethnic group, as well as the necessity of the total or partial destruction of 'inferior' groups, as a condition for the survival and prosperity of the 'superior' nation (nationality), accompanied by military aggression and genocide".⁴⁴ An essential feature of Nazism is the "exceptional character and superiority of one race (nationality) over others" which triggers the need to suppress the inferior races (nationalities), as a condition for the survival and prosperity of the "superior" ones. This is carried out through the pursuit of a genocidal objective expressed in the aim of total or partial destruction of a "different" group of people (based on race, nationality or ethnicity). It may involve the destruction of as many members of a particular group as possible or the destruction of selected representatives of a political, religious or intellectual elite. The implementation of this goal of Nazism transforms the ideology into a crime against humanity or into a crime against peace

³⁷ *Fashizm*, <https://slovarozhegova.ru/word.php?wordid=33745> (accessed on 13.09.2022).

³⁸ Ukaz Prezidenta RF ot 23 marta 1995 g., No. 310, 'O merakh po obespecheniyu soglasovannykh deystviy organov gosudarstvennoy vlasti v bor'be s proyavleniyami fashizma i inykh form politicheskogo ekstremizma v Rossiyskoy Federatsii', *Sobraniye zakonodatel'stva RF*, 1995, No. 13, St. 1127.

³⁹ Ivanov, A.Yu., 'Ponimaniye...', op. cit., p. 74.

⁴⁰ *Ibidem*, p. 73.

⁴¹ Andreyeva, A.V., 'Sotsial'naya...', op. cit., p. 112.

⁴² Ivanov, A.Yu., 'Ponimaniye...', op. cit., p. 74.

⁴³ Ignatenko, V.V., 'Nekotoryye problemy zakonodatel'noy reglamentatsii reabilitatsii natsizma', in: *Aktual'nyye problemy rossiyskoy pravovoy politiki. Sbornik dokladov XVII nauchno-prakticheskoy konferentsii prepodavateley, studentov, aspirantov i molodykh uchenykh*, Taganrog, 2016, p. 145.

⁴⁴ Maraeva, A.V., 'Voprosy...', op. cit., p. 154.

and security of humanity.⁴⁵ Thus, the basis of Nazism is formed by ideas of the superiority of one nation over another and the waging of aggressive war.⁴⁶

In turn, academics in the areas of philosophy, political science, politics and sociology define Nazism as an “ideology”, a “political regime”, “the practice of implementing a well-defined state- or quasi-state policy”, as well as “various manifestations of the activity of individual and collective subjects”. They perceive it both as “a certain ideology and as any actions to implement it”.⁴⁷

As shown by the above discourse, the concept of Nazism can be treated both narrowly and broadly.⁴⁸ Nazim has not, however, been clearly specified or defined in Russian law.⁴⁹

The next step is to explain the concept of rehabilitation of the phenomenon in question. According to S.I. Ozhegov’s Dictionary of the Russian Language, rehabilitation means “restoration of former reputation, former rights”.⁵⁰ In turn, according to Article 5(34) of the Code of Criminal Procedure of the Russian Federation of 2001,⁵¹ rehabilitation is “a procedure for the restoration of the rights and freedoms of a person who has been unlawfully or unjustly prosecuted, and compensation for the harm suffered”. In Russian legislation, the term means actions that restore the law.⁵² Thus, the meaning of rehabilitation adopted in the designation of the crime under Article 354.1 of the CC is different from its legal meaning.⁵³ According to the provision, rehabilitation constitutes “socially dangerous behaviour of the subject of the crime”.⁵⁴ It denotes an unlawful act and therefore has a negative connotation.⁵⁵ Furthermore, it is important to remember that the term “rehabilitation” refers to a specific person and not an ideology.⁵⁶

⁴⁵ Ivanov, A.Yu., ‘Ponimaniye...’, op. cit., pp. 74–75.

⁴⁶ Ignatenko, V.V., ‘Nekotoryye...’, op. cit., p. 144.

⁴⁷ Ivanov, A.Yu., ‘Ponimaniye...’, op. cit., p. 73.

⁴⁸ Sementsova, I.A., Fomenko, A.I., ‘Okhrana...’, op. cit., p. 102.

⁴⁹ Yefimov, M.A., ‘K voprosu ob opredelenii ponyatiya “reabilitatsiya natsizma” v ugovnom kodekse Rossiyskoy Federatsii’, in: *Vestnik nauchnykh trudov yuridicheskogo fakul’teta “Yurist”*, Kazan’, 2015, p. 3, https://elibrary.ru/download/elibrary_25257107_36033151.pdf (accessed on 20.09.2022).

⁵⁰ *Reabilitirovat’*, <https://slovarozhegova.ru/word.php?wordid=26757> (accessed on 20.09.2022).

⁵¹ Ugolovno-protseessual’nyy kodeks Rossiyskoy Federatsii ot 18.12.2001 g., N 174-fz (ed. Ot 07.10.2022), http://www.consultant.ru/document/cons_doc_law_34481/ (accessed on 20.09.2022).

⁵² Melanich, V.G., ‘Aktual’nyye voprosy reabilitatsii natsizma (st. 354.1 uk RF)’, in: *Pravo i pravookhranitel’naya deyatel’nost’ v Rossii, stranakh SNG i Yevropeyskogo soyuza: zakonodatel’stvo i sotsial’naya effektivnost’*. *Materialy V Mezhdunarodnoy nauchno-prakticheskoy konferentsii prepodavateley, prakticheskikh sotrudnikov, studentov, magistrantov, aspirantov, soiskateley*, Saratov, 2018, p. 216.

⁵³ Ignatenko, V.V., ‘Nekotoryye...’, op. cit., p. 144.

⁵⁴ Melanich, V.G., ‘Aktual’nyye...’, op. cit., p. 216.

⁵⁵ Sementsova, I.A., Fomenko, A.I., ‘Okhrana...’, op. cit., p. 102.

⁵⁶ Pesterova, Yu.S., Poshelov, P.V., ‘K voprosu o yuridicheskikh defektakh stat’i 354.1 ugovnogo kodeksa Rossiyskoy Federatsii’, *Sibirskoye yuridicheskoye obozreniye*, 2017, Vol. 14, No. 3, pp. 47–48.

The above analysis leads to the conclusion that the name of the crime (rehabilitation of Nazism) is incorrect, inappropriate,⁵⁷ unfitting.⁵⁸ Some propose changing it to: Public justification of Nazism.⁵⁹

REGULATORY SCOPE OF THE CRIME OF NAZISM REHABILITATION

The crime of rehabilitation of Nazism is included in Article 354.1 CC RF in Section XII entitled: “Crimes against peace and security of humanity” in Chapter 34 under the same title.

Under Article 354.1(1) CC RF, it shall be punishable

“to publicly deny facts established by the verdict of the International Military Tribunal⁶⁰ for the trial and punishment of the major war criminals of European Axis powers, to praise the crimes established by this verdict, and to knowingly disseminate untrue information about the operations of the USSR during World War II and about the veterans of the Great Patriotic War”.

The crime shall be punishable by a fine of up to three million roubles or up to the amount of the convicted person’s three years’ salary or other income, or by forced labour for up to three years, with deprivation of the right to hold certain positions or carry out certain activities for up to three years, or by imprisonment for the same period with deprivation of the right to hold certain positions or carry out certain activities for up to three years.

The object of the crime in Article 354.1(1) CC RF is peace and peaceful functioning of states.⁶¹ Others consider the object to be the historical memory of the nation (Ye.V. Chervonnykh), international peace (E.Y. Badaliantz), the security of humanity (A.Y. Ivanov).⁶² Some point out that since Nazism “deforms historical evaluations, threatens the peaceful functioning of states”, the object of protection should be peace and security of humanity.⁶³

The first element of the objective side of the crime consists in publicly denying facts established by the verdict of the International Military Tribunal (IMT) for the trial and punishment of major war criminals from the European Axis, and praising the crimes established by this verdict. In a general sense, denial is understood as

⁵⁷ Melanich, V.G., ‘Aktual’nyye...’, op. cit., p. 216.

⁵⁸ Ignatenko, V.V., ‘Nekotoryye...’, op. cit., p. 144.

⁵⁹ Chernyavskiy, A.V., ‘Ponyatiye reabilitatsii natsizma v ugovnom zakonodatel’sve Rossii’, *Nauchnyy elektronnyy zhurnal Meridian*, 2021, No. 3, p. 4; Sementsova, I.A., Fomenko, A.I., ‘Okhrana...’, op. cit., p. 103; Maraeva, A.V., ‘Voprosy...’, op. cit., p. 155; Yegorova, N.A., ‘Reabilitatsiya natsizma: ugovno-pravovoy analiz’, *Kriminologicheskii zhurnal Baykal’skogo gosudarstvennogo universiteta ekonomiki i prava*, 2015, Vol. 9, No. 3, p. 501.

⁶⁰ The Nuremberg International Military Tribunal (called “the Nuremberg Tribunal”) was established in 1945 on the initiative of France, the USA, the United Kingdom and the USSR. Its purpose was to try German war criminals from the period of World War II for war crimes, crimes against peace and humanity.

⁶¹ Duyunov, V.K., ‘Glava 46. Prestupleniya protiv mira i bezopasnosti chelovechestva’, in: Duyunov, V.K. (ed.), *Ugovnoye pravo Rossii. Chasti obshchaya i osobennaya*, Moskva, 2017, p. 736.

⁶² Pikin, I.V., ‘K voprosu...’, op. cit., p. 3.

⁶³ Ignatenko, V.V., ‘Nekotoryye...’, op. cit., p. 144.

“denying the existence of something” “opposing something”. It can only be expressed verbally during public appearances, through publication of material in the media, through publication of a book. In the context of the provision in question, denying facts established by the verdict of the IMT may include denial, challenging the legality, the validity as well as the integrity of that verdict. More specifically, in the Article under analysis, only denying facts established in the verdict is punishable; conversely, denying the competence of the IMT, the proper legal evaluation of the alleged offences and *corpora delicti* or the integrity of the sanctions imposed – shall not be punishable. It should also be emphasised that this refers to the denial of known historical facts, unsupported by research, and also to the deliberate dissemination of false information. “Denying the commission of any of the Nazi crimes established in the verdict of the IMT signifies, in effect, justifying that crime”.⁶⁴

Article 354.1(1) CC FR is a blanket provision. It includes an excerpt from the IMT verdict on the trial and punishment of major war criminals of the European Axis at the Nuremberg Trials, as well as the Charter of the Tribunal which specifies the crimes under its jurisdiction.⁶⁵ These consist of the following groups of offences: (a) crimes against peace (e.g. planning, preparation, initiation or execution of a war of aggression or a war in violation of treaties); (b) war crimes (e.g. a violation of the laws and customs of war: homicides, torture, pillaging of public or private property; unnecessarily destroying towns or villages); (c) crimes against humanity (e.g. murder, extermination, enslavement, exile or other atrocities against civilians).⁶⁶

It should be recalled at this point that the European Axis was a bloc of Nazi states established on 27 September 1940 after Germany, Italy and Japan signed a tripartite pact (Rome-Berlin-Tokyo Axis) on the demarcation of spheres of influence and mutual military aid.⁶⁷ As Italy and Germany were the only European countries forming this axis, the provision applies solely to them. Some Russian lawyers ask the question: why are “Bulgarian, Hungarian, Slovak, Yugoslav, Ukrainian, Byelorussian, Estonian, Latvian and Lithuanian satellite allies and auxiliaries” not mentioned in the provision?⁶⁸

Another constituent element of the crime under Article 354.1(1) CC RF includes praising the crimes established in the IMT verdict. In colloquial language, praising means considering something as “good, proper, acceptable”, “justified”, “allowed”.⁶⁹ In the context of the analysed act, it consists in condoning, i.e. justifying the “reputation” of the crime, belittling its gravity, scale and cruelty, pointing out the illegality and lack of integrity of the criminal prosecution of crimes established by the IMT verdict.⁷⁰

⁶⁴ Yegorova, N.A., ‘Reabilitatsiya...’, op. cit., p. 497.

⁶⁵ Meretukov, A.G., ‘Ugolovno-pravovyye aspekty protivodeystviya reabilitatsii natsizma’, in: *Ugolovnaya politika i kul'tura protivodeystviya prestupnosti. Materialy Mezhdunarodnoy nauchno-prakticheskoy konferentsii*, Krasnodarskiy universitet MVD Rossii, Krasnodar, 2016, p. 236.

⁶⁶ International Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed in London on 8 August 1945. (Polish Journal of Laws of 1947, No. 63, item 367).

⁶⁷ Duyunov, V.K., ‘Glava 46...’, op. cit., p. 736.

⁶⁸ Redkov, S.K., Busheva, F.F., ‘Yuridicheskiy...’, op. cit., p. 25.

⁶⁹ Yegorova, N.A., ‘Reabilitatsiya...’, op. cit., p. 497.

⁷⁰ Meretukov, A.G., ‘Ugolovno-pravovyye...’, op. cit., p. 237.

The public nature of both presented behaviours means communications available to an unspecified circle of people (speeches at a rally or lecture, putting up posters),⁷¹ committing the crime in a public, visible manner, either verbally or in writing, using various technical means (e.g. a microphone). This does not include mass media.⁷²

The next element of the analysed crime is deliberate public dissemination of untrue information about the operations of the USSR during World War II and about veterans of the Great Patriotic War. It consists in communicating to others manifestly untrue⁷³ information about facts, i.e. information that is untrue, and the disseminator is aware of that fact.⁷⁴ Untrue information does not include images, literature and films. Untrue information cannot be information that is not clearly positive or negative.⁷⁵ It is not punishable to disseminate negative evaluations, because pure value judgments cannot be criminalised, e.g. the claim that the activity of the Stalinist USSR during World War II was as negative as that of Germany.⁷⁶ This also applies to new results of historical research. The emergence of such results should not be regarded as a violation or denial of the IMT⁷⁷ verdict. Only publicly disseminating untrue information is therefore punishable.⁷⁸

The subject of the crime shall be a natural person who has reached the age of 16. The subjective side involves intentional guilt with direct intent. The crime is of a formal nature.

Under Article 354.1(2) CC RF, commission of the aforementioned acts: "(a) by a person taking advantage of their official position; (b) by a group of persons, a group of persons acting in arrangement or an organised group; (c) with the use of mass media or information and telecommunication networks, including the internet; (d) involving falsifying prosecution evidence" shall be punishable. The crime shall be punishable by a fine of two to five million roubles or up to the amount of the convicted person's salary or other income for a period from one to five years, or by a penalty of forced labour for up to five years, with deprivation of the right to hold certain positions or carry out certain activities for up to five years, or by imprisonment for the same period with deprivation of the right to hold certain positions or carry out certain activities for up to five years.

Re (a). The commission of a crime by a person taking advantage of their official position. This signifies its perpetration by a public official holding specific powers in a body or institution, who takes advantage of their position for illegal purposes, including through a show of influence, using their authority for illegal actions.⁷⁹ Taking advantage of one's official position

⁷¹ Duyunov, V.K., 'Glava 46...', op. cit., p. 737.

⁷² Dmitrenko, A.P., 'St. 354.1', in: D'yakov, S.V., Kadnikov, N.G. (ed.), *Kommentariy k ugolovnomu kodeksu Rossiyskoy Federatsii. Nauchno-prakticheskiy (postateynnyy)*, Moskva, 2016, p. 1010.

⁷³ Yegorova, N.A., 'Reabilitatsiya...', op. cit., p. 498.

⁷⁴ Duyunov, V.K., 'Glava 46...', op. cit., p. 737.

⁷⁵ Ignatenko, V.V., 'Nekotoryye...', op. cit., p. 145.

⁷⁶ Yegorova, N.A., 'Reabilitatsiya...', op. cit., p. 499.

⁷⁷ Ignatenko, V.V., 'Nekotoryye...', op. cit., p. 145.

⁷⁸ Yegorova, N.A., 'Reabilitatsiya...', op. cit., p. 499.

⁷⁹ Dmitrenko, A.P., 'St. 354.1...', op. cit., p. 1010.

“is expressed not only in the deliberate use by the above persons of their official powers, but also in exerting influence over other persons, based on the importance and authority of the position held, so that those persons carry out public actions aimed in particular at denying facts established by the verdict of the International Military Tribunal, denying acknowledgement of the crimes established by that verdict, knowingly disseminating untrue information about the activities of the USSR during World War II, etc.”⁸⁰

Re (b). The commission of a crime by a group of persons, a group of persons upon arrangement or an organised group. According to Article 35(1) CC RF, a crime is deemed to have been committed by a group of persons, if at least two persons participated in its commission without prior arrangement. This means that the crime was committed by two or more persons spontaneously, with each member of the group being a perpetrator of the crime or some elements thereof. A crime committed by a group of persons acting upon arrangement denotes such an offence committed by persons who jointly planned the crime in advance (Article 35(2) CC RF). The existence of a prior arrangement distinguishes it from a crime committed by a group of individuals as well as by an organised group. Pursuant to Article 35(3) CC RF, a crime committed by an organised group denotes such a criminal act committed by a permanent group of persons that was formed earlier in order to commit one or more crimes. As is apparent from Article 35(2) and (3) CC RF, the common features in mentioned forms of criminal activity include: a group composed of an unlimited number of persons; the intention to commit a crime; a prior arrangement aimed at committing a criminal offence. The difference is that in a group of persons acting upon arrangement, the participants agree in advance on the purpose of committing a crime, whereas in an organised group, they join together in advance in order to commit one or more criminal offences. Joining together implies dividing tasks and allocating specific actions to participants, thus forming the unity of a group of people with the aim of committing one or more crimes.⁸¹

Re (c). Committing a crime using mass media or information and telecommunication networks, including the internet. This means influencing the formation of opinions, views and the evaluation of ideologies via the above means.⁸² It consists in publishing texts, photographs and information in the media about the activities of Nazi criminals justifying and glorifying the Nazis and their actions.⁸³ On the internet, this is done by

⁸⁰ Chervonnykh, Ye.V., ‘Ugolovno-pravovaya kharakteristika prestupleniy, predusmotrennykh stat’ey 354.1 “Reabilitatsiya natsizma” uk RF, i otdel’nyye problemy yeye pravoprime-neniya’, *Problemy pravookhranitel’noy deyatel’nosti*, 2015, No. 4, p. 25.

⁸¹ For more see: Laskowska, K., ‘Rosyjski kodeks karny wobec przestępczości zorganizowanej’, in: Dukiet-Nagórska, T. (ed.), *Zagadnienia współczesnej polityki kryminalnej*, Bielsko-Biała, 2006, p. 177.

⁸² Grigor’yev, D.Ye., ‘Rasprostraneniye kriminogennoy informatsii po st. 354.1 uk RF’, in: Gorokhov, A.A. (ed.), *Molodezh’ i nauka: Shag k uspekhu. Sbornik nauchnykh statey 4-y Vserossiyskoy nauchnoy konferentsii perspektivnykh razrabotok molodykh uchenykh. V 5-ti tomakh*, Kursk, 2020, p. 75.

⁸³ Sheveleva, K.V., Protchenko, V.V., ‘Problemy reglamentatsii otvetstvennosti za proyavleni-ya natsizma’, *Pravoporyadok: istoriya, teoriya, praktika*, 2021, No. 3, p. 81.

“posting textual information in electronic magazines, newspapers, on websites, blogs and social networks, both as separate publications (articles) and as comments under existing other communications; posting pre-prepared images (drawings, photographs) or creating images using features of websites that deny the facts of crimes committed by the Nazis and their accomplices (e.g. the aggressive nature of the war), accepting the crimes committed by the Nazis and their accomplices portrayed as heroes, defiling the symbols of Russia’s military glory; posting pre-prepared videos on video hosting sites and other sites with similar content; posting files of any type on resources intended for temporary and/or permanent file storage; distribution of material via email systems, personal correspondence systems available on certain websites and social networks, in ‘chat rooms’ or via instant messaging systems; distribution of material via decentralised file-sharing networks – ‘torrents’, etc.”⁸⁴

Re (d). Committing a crime by falsifying prosecution evidence. This means the creation of false documents and objects pointing to unlawful activities of the USSR during World War II.⁸⁵ It should be recalled that under Article 74(1) of the 2001 Code of Criminal Procedure of the Russian Federation, “evidence in a criminal case is any information on the basis of which the court, the prosecutor and/or the investigator establishes, in the manner provided for by this Code, the existence or absence of circumstances to be proved in the course of criminal proceedings, as well as other circumstances relevant to the criminal case”. In cases involving falsifying prosecution evidence related to the rehabilitation of Nazism we may talk about actions such as:

“public disclosure of non-existent materials (in the absence of an original source); public disclosure of materials, in whole or in part, that do not reflect the original source; use of information ‘out of context’ that entirely or partially distorts commonly known facts confirmed by the original source; falsification of the original source, etc.”⁸⁶

However, it must be emphasised that evidence does not exist outside a criminal case, and that information pointing to the fact that a crime has been committed does not yet constitute proof of its commission.⁸⁷ Furthermore, prosecution evidence is procedural in nature, thus, should such wording be included in a criminal provision?⁸⁸ The doubts raised by this wording demonstrate that it is not an appropriate definition of prohibited behaviour.

All the alternative actions indicated above must be public in nature, i.e. they must be addressed to an unspecified circle of people. Thoughts and beliefs about history, as well as expressing them during conversations e.g. within the family circle, do not give rise to liability on the basis of the discussed article.⁸⁹

The subject of the crime shall be a natural person who has reached the age of 16. A person taking advantage of their official position shall also be a subject of the crime. The subjective side shall be characterised by intentional guilt in the form of direct intent.⁹⁰

⁸⁴ Chervonnykh, Ye.V., ‘Ugolovno-pravovaya...’, op. cit., p. 23.

⁸⁵ Duyunov, V.K., ‘Glava 46...’, op. cit., p. 737.

⁸⁶ Chervonnykh, Ye.V., ‘Ugolovno-pravovaya...’, op. cit., p. 26.

⁸⁷ Yegorova, N.A., ‘Reabilitatsiya...’, op. cit., p. 499.

⁸⁸ Redkov, S.K., Busheva, F.F., ‘Yuridicheskiy...’, op. cit., p. 26.

⁸⁹ Levandovskaya, M.G., ‘Ugolovnaya...’, op. cit., p. 145.

⁹⁰ Ibidem, p. 145.

On the basis of Article 354.1(3) CC RF, it shall be punishable to “disseminate information expressing manifest disrespect to the public about the days of military glory and memorable dates of Russia related to the defence of the Motherland, as well as to desecrate the symbols of Russia’s military glory, to insult the memory of the defenders of the Motherland, i.e. to degrade the honour and dignity of a veteran of the Great Patriotic War, committed in public”. The crime shall be punishable by a fine of up to three million roubles or up to the amount of the convicted person’s three years’ salary or other income, or by forced labour for up to three years, up to 360 hours or corrective labour of up to one year or compulsory work for up to three years with deprivation of the right to hold certain positions or carry out certain activities for up to three years, or by imprisonment for the same period with deprivation of the right to hold certain positions or carry out certain activities for up to three years.

The object of the crime is the authority of the Russian Federation.

The first element of the objective side of the analysed offence is the dissemination of information expressing manifest disrespect to the public about the days of military glory and memorable dates of Russia related to the defence of the Motherland, committed in public. Dissemination of information involves communicating it orally and in writing, even to one person,⁹¹ making the information available, public and known to many people.⁹²

The second element of the offence in question, i.e. desecration of the symbols of Russia’s military glory, insulting the memory of the defenders of the Motherland, i.e. degrading the honour and dignity of a veteran of the Great Patriotic War, committed in public, shall be understood to signify immoral, cynical actions (e.g. offensive inscriptions, drawings, symbols on gravestones or cemetery buildings, throwing rubbish into a grave, destroying or damaging flowers, wreaths) committed on monuments related to military history (burial sites of soldiers, museums, historical monuments) and actions discrediting national military orders and awards, works of art dedicated to Russia’s military history (e.g. public burning), etc.⁹³

It should be noted that there is no precisely defined concept of symbols of military glory in Russian legislation. In practice, these most often include: battle flags, ship flags, military awards, monuments to defenders of the Motherland, soldiers’ uniforms,⁹⁴ orders, medals, museums or objects related to courage and victories during the war,⁹⁵ as well as soldiers’ graves, armed forces rituals.⁹⁶ In turn, the Military Glory Days (days of Russian arms’ glory) and memorable dates of Russia in Russian history are specified in Article 1 of the 1995 Law on Military Glory Days and Memorable Dates of Russia.⁹⁷ These are recognised as “military glory days (victorious days) of Russia that

⁹¹ Dmitrenko, A.P., ‘St. 354.1...’, op. cit., p. 1010.

⁹² Rozenko, S.V., ‘Reabilitatsiya natsizma: novyye osnovaniya ugovolnoy otvetstvennosti’, *Yuridicheskaya nauka i pravookhranitel’naya praktika*, 2014, No. 3, p. 83.

⁹³ Chervonnykh, Ye.V., ‘Ugolovno-pravovaya...’, op. cit., p. 25.

⁹⁴ Duyunov, V.K., ‘Glava 46...’, op. cit., p. 737.

⁹⁵ Griбанov, Ye.V., Yablonskiy, I.V., ‘Ugolovnaya...’, op. cit., pp. 148–149.

⁹⁶ Chervonnykh, Ye.V., ‘Ugolovno-pravovaya...’, op. cit., p. 23.

⁹⁷ Federal’nyy zakon ot 13 marta 1995 g., No. 32-FZ, *O dnyakh voinskoy slavy i pamyatnykh datakh Rossii*, http://www.consultant.ru/document/cons_doc_LAW_5978/247d10b68af90f6af20e0682d454c46231efc7d9/ (accessed on 13.09.2022).

played a decisive role in Russian history and the memorable dates of the Motherland associated with the most important events in the history of the state and society”.⁹⁸ Literature emphasises that the demonstration of Nazi symbols in the street on military glory days or on remembrance days, irrespective of the fact that it is an administrative violation of the law, should be qualified under Article 354.1(3) CC RF on account of the disrespect for these days thus expressed.⁹⁹

Some researchers question the relevance of introducing Article 354(3) CC RF. They point to the lack of established historical periods in which information expressing a clear lack of respect for the public about the days of military glory and memorable dates in Russia associated with the defence of the Motherland is disseminated, as well as the lack of definition of the concept of “symbols of military glory” sanctioning criminal liability. They therefore pose the question: does this article concern only the “Nuremberg Legacy” or does it cover the most wide-ranging sphere of social relations?¹⁰⁰

The subject shall be a natural person who has reached the age of 16. The subjective side shall be characterised by intentional guilt in the form of direct intent. Motives and objectives are not relevant with regard to criminal liability.¹⁰¹ Rehabilitation of Nazism is a formal offence.¹⁰²

Under Article 354.1(4) CC RF, commission of “offences referred to in paragraph 3 of this Article committed by a group of persons, a group of persons acting upon arrangement or an organised group or with the use of mass media or information and telecommunication networks, including the internet” shall be punishable. The crime shall be punishable by a fine of two to five million roubles or up to the amount of the convicted person’s salary or other income for a period from one to five years, or by a penalty of forced labour for up to five years, with deprivation of the right to hold certain positions or carry out certain activities for up to five years, or by imprisonment for the same period with deprivation of the right to hold certain positions or carry out certain activities for up to five years.

As these elements have been discussed when describing Article 354.1(2) and (3) CC RF, they will not be presented again here. One may only point out that, apart from disseminating the information at issue in the media, other ways of presenting it include:

“establishing various public and religious associations, other organisations that declare appreciation of Nazi ideology or specify Nazi and fascist leaders as their spiritual leaders, glorifying Nazi criminals and their accomplices (Vlasovists, Cossack formations and other collaborators fighting on the side of the Nazis); distributing printed material produced for educational institutions (e.g. history textbooks that distort known facts about the course and consequences of World War II); organising rallies and meetings at which Nazism, Nazi

⁹⁸ Chuchayev, A.I. (ed.), *Ugolovnyy kodeks Rossiyskoy Federatsii. Kommentariy s putevoditelem po sudebnoy praktike*, Moskva, 2019, p. 1496.

⁹⁹ Poshelov, P.V., ‘Ob’ yekt prestupleniya predusmotrennogo ch. 3 st. 354.1 uk RF’, *Voyennaya yustitsiya*, 2020, No. 8, p. 14.

¹⁰⁰ Sheveleva, K.V., Protsenko, V.V., ‘Problemy...’, op. cit., p. 82.

¹⁰¹ Dmitrenko, A.P., ‘St. 354.1...’, op. cit., p. 1011.

¹⁰² Chervonnykh, Ye.V., ‘Ugolovno-pravovaya...’, op. cit., p. 24.

criminals and their accomplices are publicly justified (e.g. speeches and slogans justifying Nazi policies against the Jews); taking action to restore the rights of Nazi criminals and their accomplices, awarding them state or public decorations, establishing other state or public incentives, naming streets and squares, settlements and other geographical sites, enterprises, institutions and organisations, techniques of combat units, establishing holidays in their honour; desecrating symbols of Russia's military glory, expressed in destruction, littering, painting graffiti on monuments related to Russia's military history (burial sites of soldiers, museums, historical buildings, etc.).¹⁰³

The subject of the crime shall be a natural person who has reached the age of 16. The subjective side shall be characterised by intentional guilt involving direct intent.

EVALUATING PROVISIONS ON THE CRIME OF REHABILITATION OF NAZISM

Having analysed the crime of rehabilitation of Nazism in the Russian Criminal Code, it is necessary to evaluate this offence. The rationale, name and scope of the act in question will be evaluated.

It should be noted that since the introduction of the provisions in question into the Criminal Code, they have been debated both among lawyers and the general public.¹⁰⁴ On this basis, two positions have emerged: for and against the regulation.

Supporters of the current solution praise the legislator's decision, stressing the need to protect historical memory. They treat the legislator as a custodian of historical memory and appreciate the accuracy of its predictions of trends in international politics, its judgment of the situation in the country, and its care for the interests of the nation.¹⁰⁵ They note that "the criminal law has for the first time instituted liability for distorting the historical understanding, traditional for Russian society, of Nazism and its anti-human essence".¹⁰⁶ It has banned propaganda without a credible scientific basis, but not true historical science.¹⁰⁷ In the view of supporters, by outlawing the rehabilitation of Nazism, "the state has expressed a negative attitude towards all manifestations of Nazism, as well as attempts to revise history, as actions aimed at endorsing and propagating the idea of Nazism".¹⁰⁸ A.V. Zigarev believes that the discussed criminalisation sends a clear message to society that acts are prohibited and subject to severe penalties.¹⁰⁹ The Article introduced into the Criminal Code was seen as a manifestation of the sound idea of informing about the events of World War II "which is an idea dear to most citizens",¹¹⁰ especially

¹⁰³ Chervonnykh, Ye.V., 'Ugolovno-pravovaya...', op. cit., p. 24.

¹⁰⁴ Ignatenko, V.V., 'Nekotoryye...', op. cit., p. 144.

¹⁰⁵ Makeyeva, I.S., 'Sotsial'naya...', op. cit., pp. 146 and 147.

¹⁰⁶ Andreyeva, A.V., 'Sotsial'naya...', op. cit., p. 114.

¹⁰⁷ Yegorova, N.A., 'Reabilitatsiya...', op. cit., p. 479.

¹⁰⁸ Maraeva, A.V., 'Voprosy...', op. cit., p. 153.

¹⁰⁹ Gad'yan, A.S., 'Reabilitatsiya...', op. cit., p. 43.

¹¹⁰ Tabatchikova, A.V., 'Reabilitatsiya natsizma: problema primeneniya printsipov deystviya ugolovnogo zakona v prostranstve', in: *Evolyutsiya rossiyskogo prava. Materialy XVII Mezhdunarodnoy nauchnoy konferentsii molodykh uchenykh i studentov*, Yekaterinburg, 2019, p. 540.

as Russians to this day remember the consequences of the “bloody and destructive war waged against the ideas of Nazism”.¹¹¹

Opponents of introducing the crime at issue into the Criminal Code point out that law-making should take into account not only political tensions and the significance of certain historical events for the state, but also a rational analysis of the need for a legal response to certain behaviour and the absence of political opportunism. They stress that outlawing the rehabilitation of Nazism is not in line with the fundamental principles of criminalisation, is not an appropriate response to the public threat and the prevalence of the act.¹¹² Indeed, it is not justified by the number of perpetrators, the number of established crimes or the convictions for those offences. Since 2014, only a few crimes and convictions under Article 354.1 CC RF have been recorded each year.¹¹³ This provision is described by its opponents as “an extreme politicisation of law-making”.¹¹⁴ Others point to its impact as regards the ban on historical research or the order to prosecute for convictions.¹¹⁵ They regard it as a manifestation of censorship and a restriction of freedom of expression, and thus as an attack on freedom and freedom of scientific research.¹¹⁶

In the context of the above considerations, it is necessary to point out the inappropriateness of the name of the crime¹¹⁷ with regard to the scope of the acts criminalised under Article 354.1(1) and (3) CC RF. Paragraph 1 does not define the concept of Nazism, does not show links with the dissemination of untrue information about the actions of the USSR during World War II. In turn, paragraph 3 shows no connection at all with the rehabilitation of Nazism. The outlawed behaviour may be deemed defamatory and insulting, but not necessarily.¹¹⁸

An analysis of the scope of the regulation indicates that Nazism violates several interests protected by criminal law (interests of the individual, of society, of the state).¹¹⁹ According to some scholars, the provision is included in the right place, i.e. in Section XII, Chapter 34 of the Criminal Code concerning crimes against peace and security of humanity, i.e. alongside crimes such as genocide, waging an aggressive war, sale of weapons of mass destruction, that is acts being a subject of concern

¹¹¹ Ignatenko, V.V., ‘Nekotoryye...’, op. cit., p. 144.

¹¹² Makeyeva, I.S., ‘Sotsial’naya...’, op. cit., p. 146.

¹¹³ Rostokinskiy, A.V., Danel’yan, S.V., Meshcheryakova, T.F., ‘Ob osobennostyakh privilecheniya k ugolovnoy otvetstvennosti za reabilitatsiyu natsizma’, *Obrazovaniye i pravo*, 2021, No. 12, p. 229. The first person convicted under this article was Perm resident V. Luzgin, who in 2014 posted an article on social media stating that “the Communists and the Germans invaded Poland together on 1 September 1939, starting World War II” and also that “Communism and Nazism collaborated closely”. He was sentenced to a 200,000 rouble fine in 2016. See: Dyachenko, A.V., ‘Obosnovannost’ kriminalizatsii reabilitatsii natsizma v svete ogranicheniya prav na svobodu slova’, *Voprosy rossiyskoy yustitsii*, 2020, No. 9, p. 886.

¹¹⁴ Rostokinskiy, A.V., Danel’yan, S.V., Meshcheryakova, T.F., ‘Ob osobennostyakh...’, op. cit., p. 228.

¹¹⁵ Ignatenko, V.V., ‘Nekotoryye...’, op. cit., p. 144; Dyachenko, A.V., ‘Obosnovannost’...’, op. cit., p. 888.

¹¹⁶ Tabatchikova, A.V., ‘Reabilitatsiya...’, op. cit., p. 540.

¹¹⁷ Sementsova, I.A., Fomenko, A.I., ‘Okhrana...’, op. cit., p. 102.

¹¹⁸ Dmitrenko, A.P., ‘St. 354.1...’, op. cit., p. 1011.

¹¹⁹ Levandovskaya, M.G., ‘Ugolovnaya...’, op. cit., p. 143.

for the entire international community.¹²⁰ They consider it appropriate that the provision should be included in the part of the Criminal Code which protects social relations safeguarding the security of the international.¹²¹ Others believe that this does not correspond to the object of criminal law protection under the provision.¹²² According to the latter, a more appropriate place would be Chapter 29 entitled “Crimes against the fundamentals of the constitutional system and state security” or Chapter 24 entitled “Crimes against public security”. This proposal is appropriate in view of the fact that the historical memory protected by the provisions on the rehabilitation of Nazism (covering events from World War II) does not correspond to an object of criminal law protection such as peace and security of humanity.¹²³ Some believe that Article 354.1 CC RF should be placed in Chapter 25 entitled “Crimes against human health and public morality”.¹²⁴

The crime under Article 354.1 CC RF fulfils the constituent elements of a number of provisions already known in criminal legislation concerning breach of peace, violation of peaceful coexistence of population groups holding different political views, discrimination and defamation on account of belonging to such groups, e.g.: crimes of an extremist nature – Article 214(2) (vandalism), Article 280 (public call for extremist activity) and Article 282 CC RF (incitement to hatred or enmity).¹²⁵ It is worth noting that many solutions with regard to Nazi propaganda, ideology and symbolism are contained in the Act on Counteracting Extremist Activity of 2002,¹²⁶ in several provisions of the 1996 Criminal Code and in the 2001 Code of Administrative Offences.¹²⁷ Such a “proliferation” of regulations on extremist activity means that, depending on the attitude towards a particular group of citizens, selected provisions can be used as “instruments of propaganda and political combat wielded by those in power, depending on subjective perception and interpretation of history and new ideological dogmas, under threat of punishment”.¹²⁸ Another problem is the conflict between the norm stipulated in Article 354.1 of the 1996 Criminal Code and that of Article 20.3 of the 2001 Code of Administrative Offences (propagating or publicly displaying Nazi symbols or symbols of extremist organisations). This signifies that painting a swastika may entail liability for vandalism, a crime of an extremist nature or crimes against peace and security of humanity.¹²⁹

¹²⁰ Gad'yan, A.S., 'Reabilitatsiya...', op. cit., p. 43.

¹²¹ Pikin, I.V., 'K voprosu...', op. cit., p. 3.

¹²² Maksimova, M.A., Nazmutdinova, D.M., 'Reabilitatsiya...', op. cit., p. 443.

¹²³ Gad'yan, A.S., 'Reabilitatsiya...', op. cit., pp. 43–44.

¹²⁴ Melanich, V.G., 'Aktual'nyye...', op. cit., p. 216.

¹²⁵ Rostokinskiy, A.V., Danel'yan, S.V., Meshcheryakova, T.F., 'Ob osobennostyakh...', op. cit., p. 228.

¹²⁶ Federal'nyy zakon ot 25 iyulya 2002 g., N 114-FZ, "O protivodeystvii ekstremistskoy deyatel'nosti", <https://base.garant.ru/12127578/> (accessed on 21.09.2022).

¹²⁷ Kodeks Rossiyskoy Federatsii ob administrativnykh pravonarusheniyakh ot 30.12.2001 g., N 195-FZ (red. ot 20.10.2022), http://www.consultant.ru/document/cons_doc_LAW_34661/ (accessed on 20.09.2022).

¹²⁸ Rostokinskiy, A.V., Danel'yan, S.V., Meshcheryakova, T.F., 'Ob osobennostyakh...', op. cit., p. 231.

¹²⁹ Ibidem, p. 229.

Furthermore, the scope of criminal law protection of “tangible historical memory” is regulated by the acts dedicated to the topic (Act on Cultural Heritage Sites (Historical and Cultural Monuments) of the Nations of the Russian Federation of 2002 and the Federal Act on the Victory Banner of 2007)¹³⁰ and Articles 243, 243.1., 243.2, 244 CC RF, whereas “intangible” historical memory is also regulated by appropriate acts (the Act of the Russian Federation of 1993 on Preserving the Memory of Those Who Lost Their Lives in Defence of the Motherland; Federal Act of 1995 on Perpetuation of the Victory of the Soviet People in the Great Patriotic War 1941–1945; Federal Act of 1995 on Military Glory days and Dates of Commemoration of Russia; Federal Act of 1995 on Veterans; Federal Act of 2006 on the Honorary Title of the Russian Federation “City of Military Glory”).¹³¹ This means that provisions relating to certain elements of rehabilitation of Nazism are present in legislation (apart from Article 354.1 CC RF). For example, crimes indicated in the verdict of the IMT may serve as a means of committing crimes under Article 280 (public call for extremist activity), Article 282 (incitement to hatred or enmity), Article 354 CC RF (public calls for aggressive war), whereas the desecration of symbols of Russia’s military glory, committed in public, exhibits all the elements of Article 214(2) CC RF (vandalism).¹³²

The legislator (and – in case-law – the Supreme Court) failed to clarify some crucial concepts in the provisions of Article 354.1 CC RF, e.g.: Nazism, nationalism, fascism. It also failed to provide interpretation of behaviour related thereto. By failing to clarify these concepts “the legislator blurs the boundaries of criminal law and of freedom of expression”, “does not allow boundaries to be defined between the exercise and abuse of rights and freedoms and the prohibition of their rehabilitation in the scope of countering manifestations of Nazism”.¹³³ For the sake of clarity of the provision, these concepts should be described and included, for example in a footnote to the Article in question.¹³⁴

Some believe that the provision concerning rehabilitation of Nazism should not be limited only to the facts established by the verdict of the IMT, but should

¹³⁰ Federal’nyy zakon ot 25.06.2002 g., No. 73-FZ, *Ob ob’yektakh kul’turnogo naslediya (pamyatnikakh istorii i kul’tury) narodov Rossiyskoy Federatsii*, http://www.consultant.ru/document/cons_doc_LAW_37318/ (accessed on 20.09.2022) and Federal’nyy zakon ot 07.05.2007 g., No. 68-FZ, “O Znamenii Pobedy”, http://www.consultant.ru/document/cons_doc_LAW_68106/ (accessed on 20.09.2022).

¹³¹ Zakon RF ot 14.01.1993 g., No. 4292-1, *Ob uvekovechenii pamyati pogibshikh pri zashchite Otechestva*, <https://base.garant.ru/1583840/> (accessed on 20.09.2022); Federal’nyy zakon ot 19.05.1995 g., No. 80-FZ, *Ob uvekovechenii Pobedy sovet-skogo naroda v Velikoy Otechestvennoy voyne 1941–1945 godov*, <https://base.garant.ru/1518946/> (accessed on 20.09.2022); Federal’nyy zakon ot 13.03.1995 g., No. 32-FZ, *O dnyakh voinskoy slavy i pamyatnykh datakh Rossii*, <https://base.garant.ru/1518352/> (accessed on 20.09.2022); Federal’nyy zakon ot 12.01.1995 g., No. 5-FZ, *O veteranakh*, <https://base.garant.ru/10103548/> (accessed on 20.09.2022); Federal’nyy zakon ot 09.05.2006 g., No. 68-FZ, *O pochetnom zvanii Rossiyskoy Federatsii “Gorod voinskoy slavy”*, <https://base.garant.ru/189454/> (accessed on 20.09.2022).

¹³² Gad’yan, A.S., ‘Reabilitatsiya...’, op. cit., p. 44.

¹³³ Levandovskaya, M.G., ‘Ugolovnaya...’, op. cit., p. 145.

¹³⁴ Melanin, V.G., ‘Ugolovnaya...’, op. cit., p. 199; Sementsova, I.A., Fomenko, A.I., ‘Okhrana...’, op. cit., p. 102.

apply to all cases of justifying and propagating Nazism.¹³⁵ They question the scope of protection covering only information relative to World War II, and leaving out other battles and wars that have also caused the loss of many lives in Russian history. Furthermore, they believe that, under scientific pluralism, researchers should be allowed to voice different views, especially since, due to the distance in time separating us from historical events, the latter may be interpreted in different ways.¹³⁶

It is interesting to note that, despite “pumping up” the provision with prohibited behaviours, penalties of varying severity are provided for: a fine, forced labour, compulsory labour and certain prohibitions, as well as prison terms (3 and 5 years). Some ask why the sanction in Article 354.1(3) CC is lower than the sanctions in paragraphs 1 and 2. They call for a more severe punishment – imprisonment,¹³⁷ which “will lead to the proper formation of a negative attitude in children towards Nazi ideology, symbols, and principles”.¹³⁸

Many lawyers have serious reservations concerning the criminalisation of rehabilitation of Nazism and the technical drafting of the provision. They accuse it of having “deep ideological meaning but no practical significance”,¹³⁹ of being topical but imperfect. It may create great difficulties for law enforcement,¹⁴⁰ foster error and lead to convicting innocent people.¹⁴¹ According to G.M. Reznik, “the provision can be applied selectively, leading to a massive risk of abuse”.¹⁴² This law represents a “politicised, opportunistic, legally unjustified, excessive criminalisation of those torts which have long been prohibited and punished as extremist crimes, hooliganism, vandalism”.¹⁴³ It is regulated in a vague, evaluative manner and contains technical errors.¹⁴⁴ In the opinion of L.V. Inogamova-Helai, Article 354.1 CC RF is an example of competition, even conflict, of criminal law norms,¹⁴⁵ and, according to K. Moskalenko, it is “an example of legal illiteracy”.¹⁴⁶ In the opinion of A.A. Kondrashova, the provision has shortcomings regarding the conceptual apparatus and evaluative terms that allow for “arbitrary application of the law in law enforcement practice, primarily in the interest of law enforcement authorities and as part of selective law enforcement”.¹⁴⁷

¹³⁵ Rovneyko, V.V., ‘Problemy...’, op. cit., p. 889.

¹³⁶ Gad’yan, A.S., ‘Reabilitatsiya...’, op. cit., p. 45.

¹³⁷ Kirichenko, V.S., ‘Gosudarstvennaya politika Rossii v bor’be s reabilitatsiyey natsizma’, in: *Zazhgi svoyu zvezdu. Materialy XII Mezhdunarodnoy nauchno-prakticheskoy konferentsii molodykh uchennykh, posvyashchennoy Dnyu Rossiyskoy nauki*, Moskva, 2017, pp. 1–2, https://www.elibrary.ru/download/elibrary_28842306_94073922.pdf (accessed on 21.09.2022).

¹³⁸ Pikin, I.V., ‘K voprosu...’, op. cit., p. 7.

¹³⁹ Gad’yan, A.S., ‘Reabilitatsiya...’, op. cit., p. 45.

¹⁴⁰ Redkov, S.K., Busheva, F.F., ‘Yuridicheskiy...’, op. cit., p. 27; Gad’yan, A.S., ‘Reabilitatsiya...’, op. cit., p. 45.

¹⁴¹ Griбанov, Ye.V., Yablonskiy, I.V., ‘Ugolovnaya...’, op. cit., p. 144.

¹⁴² Gad’yan, A.S., ‘Reabilitatsiya...’, op. cit., p. 43.

¹⁴³ Rostokinskiy, A.V., Danel’yan, S.V., Meshcheryakova, T.F., ‘Ob osobennostyakh...’, op. cit., pp. 230–231.

¹⁴⁴ Gad’yan, A.S., ‘Reabilitatsiya...’, op. cit., p. 43.

¹⁴⁵ Rovneyko, V.V., ‘Problemy...’, op. cit., p. 889.

¹⁴⁶ Gad’yan, A.S., ‘Reabilitatsiya...’, op. cit., p. 43.

¹⁴⁷ Rovneyko, V.V., ‘Problemy...’, op. cit., p. 889.

Some recognise the problematic nature of the solution adopted. However, they approve of the norm's incompatibility with the rules of legal technique and with the principles of criminalisation established in the doctrine. They consider that these allegations "fade when compared to the value of the interest protected by the law".¹⁴⁸ According to others, the provision should be removed because the forms of rehabilitation of Nazism provided for by the legislator have no legal justification, and criminal liability for them becomes a mechanism for punishing people holding different views and expressing them publicly.¹⁴⁹

In addition to changing the name of the crime, some researchers propose removing paragraph 3 from the provision and supplementing the provision with a footnote stating that this article does not apply to the results of historical research or scientific discussions, provided that they do not entail deliberate distortion of information obtained.¹⁵⁰

The analyses performed made it possible to provide answers to the questions posed in the introduction to this paper.

The rationale for the introduction into the legal order of the article criminalising the discussed behaviour convinces the reader of the need to care for the truth about the events and the heroism of the Russians during World War II, as well as the need to prevent and combat Nazism (especially in Russia and other European countries). However, it also indicates its nature as both political (fighting internal and external enemies) and populist (playing on the emotions of Russians, who glorify the heroism of the victims of the period, the steadfastness of the defenders and the victory, consolidated over the years).

The scope of the legal regulation in question is broad. However, the provision – composed of four parts – is, one may say, a collection of diverse behaviours, not entirely related to the rehabilitation of Nazism. Discussion and misunderstanding is already caused by the name of the crime which does not designate the essence of the threat.

The content of the article refers to a sensitive issue for Russians (the events of World War II) and they readily agree to protect the memory of these events through criminal sanctions. For this reason, supporters of the regulation take a positive view of the legislator's concern for historical memory. In contrast, opponents point in particular to shortcomings regarding the conceptual framework of the act in question, inadequacy of the regulation to the threat posed by the act, excessive casuistry, and impediment of scientific research. Thus, the solution is far more frequently subject to harsh criticism by lawyers – a point of view which is also shared by the author of this paper.

¹⁴⁸ Makeyeva, I.S., 'Sotsial'naya...', op. cit., p. 147.

¹⁴⁹ Dyachenko, A.V., 'Obosnovannost'...', op. cit., p. 888.

¹⁵⁰ Ignatenko, V.V., 'Nekotoryye...', op. cit., p. 146.

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